

PUBLIC UTILITIES COMMISSION

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**FILED**

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June 5, 2006

Agenda ID #5721

TO: PARTIES OF RECORD IN APPLICATION 05-08-034

This is the draft decision of Administrative Law Judge (ALJ) Grau. It will appear on the Commission's June 29, 2006 agenda. The Commission may act then, or it may postpone action until later.

When the Commission acts on the draft decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Pursuant to Rule 77.7(f)(9), comments on the draft decision must be filed within seven days of its mailing and reply comments must be filed within seven days of its mailing.

Parties to the proceeding may file comments on the draft decision as provided in Article 19 of the Commission's "Rules of Practice and Procedure." These rules are accessible on the Commission's website at www.cpuc.ca.gov. In addition to service by mail, parties should send comments in electronic form to those appearances and the state service list that provided an electronic mail address to the Commission, including ALJ Grau at jlg@cpuc.ca.gov. Finally, comments must be served separately on the Assigned Commissioner, and for that purpose I suggest hand delivery, overnight mail, or other expeditious methods of service.

/s/ ANGELA K. MINKIN
Angela K. Minkin, Chief
Administrative Law Judge

ANG:tcg

Attachment

Decision **DRAFT DECISION OF ALJ GRAU** (Mailed 6/5/2006)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Suburban Water Systems (U 339-W) for Authority to Increase Rates Charged for Water Service by \$5,633,937 or 12.1% in Fiscal 2006-2007, \$1,640,549 or 3.1% in Fiscal 2007-2008, and \$1,364,551 or 2.5% in Fiscal 2008-2009.

Application 05-08-034
(Filed August 22, 2005)

OPINION GRANTING INTERIM RATE RELIEF

I. Summary

Pursuant to Section 455.2 of the Public Utilities Code, this decision grants Suburban Water Systems (Suburban) interim rate relief on July 1, 2006. The interim increase is based on the rate of inflation as compared to existing rates (the rate of inflation to be calculated using the most recent Consumer Price Index maintained by the U.S. Department of Labor), will be subject to refund, and will be adjusted upward or downward, back to its effective date, consistent with the final rates adopted by the Commission in the pending general rate case (GRC).

We find it is in the public interest to grant interim rate relief to Suburban. The delay in processing its GRC is not Suburban's fault. Instead, Suburban delayed filing its application at the Division of Ratepayer Advocates' (DRA) request, and DRA's commitments and workload delayed filing the settlement reached before the December 28, 2005 hearing. We cannot issue a decision by the first day of the first test year in Suburban's GRC application, and the delay in this proceeding should not result in either the utility foregoing revenue necessary for

just and reasonable rates or the ratepayers paying less (or more) than reasonable rates. In addition, Suburban has made a substantial showing supporting a rate increase at least equal to the rate of inflation in its filings in this proceeding.

II. Background

Suburban filed this GRC on August 22, 2005, to request a rate increase to increase total company revenue by \$5,633,937 or 12.1% in fiscal year 2006-2007, by \$1,640,549 or 3.1% in fiscal year 2007-2008, and by \$1,364,551 or 2.5% in fiscal year 2008-2009. Suburban delayed filing its proposed and final applications at the request of DRA.

A prehearing conference was held on November 1, 2005. A scoping memo and ruling of the Assigned Commissioner issued on December 16, 2005. A hearing was held on December 28, 2005. Suburban and DRA reached a settlement in principle immediately prior to the hearings. Two additional appearances, William Robinson, a Director of the Upper San Gabriel Valley Municipal Water District representing Division 4 ratepayers, and Royall Brown, were taken at the hearing.

Suburban and DRA filed a joint motion for adoption of settlement agreement on February 17, 2006. The settlement provides for a revenue requirement increase of \$2,973,872, or a 6.38% increase over current rates, during Test Year 2006-2007, and an estimated revenue requirement increase of \$1,449,093, or 2.91% for Escalation Year 2007-2008, and \$1,344,888, or 2.62%, for Escalation Year 2008-2009.

On March 14, 2006, Suburban filed a motion for interim rate relief because the comment cycle on the proposed settlement agreement could result in a decision after the first day of the first test year, July 1, 2006, for Suburban's general rate case application. At that time, it appeared the deadline for a

proposed decision would be July 5, 2006, and a proposed decision would not issue until August 2006. Suburban stated interim relief was warranted because (1) the delay in the proceeding was not Suburban's fault; (2) Commission case law supports granting the requested relief; and (3) the requested relief is in the public interest. Suburban noted that DRA did not oppose the request for interim rate relief. No opposition was filed to the motion for interim rate relief.

Robinson submitted an opposition to the settlement agreement by e-mail on March 20, 2006. Robinson also mailed copies of the opposition with a certificate of service. However, the certificate of service was not signed. Suburban objected to the opposition being entered into the record in this proceeding in a March 27, 2006 letter. On March 30, 2006 the administrative law judge (ALJ) sent a ruling by e-mail granting Robinson until April 5, 2006 to file the opposition with the Docket Office and granting Suburban and DRA 15 days after the filing of the opposition to file reply comments. Robinson filed his opposition on April 4, 2006. Robinson requested the Commission delay the adoption of the proposed rate increase until Suburban completed a rate study. Suburban filed a reply and a motion to strike portions of Robinson's opposition on April 19, 2006.

III. Discussion

Suburban is a Class A water utility, *i.e.*, it has more than 10,000 service connections. Section 455.2, enacted in 2002, provides for a Class A water utility to request an inflation-indexed interim rate increase in the event a water general

rate case is not completed by the first day of the first test year in the application.¹ Suburban's GRC application is made pursuant to the three-year GRC cycle requirements for Class A water utilities set forth in the rate case plan (RCP) adopted in Decision (D.) 04-06-018.

The criteria set forth in D.04-06-018 for interim rate relief under Section 455.2 require that:

- a. the utility demonstrate that it has made a substantial showing in its application supporting a rate increase at least equal to the rate of inflation;
- b. the Commission determine whether interim relief is "in the public interest"; and
- c. the presiding officer's decision address whether the delay in completing the GRC proceeding is "due to actions by the water corporation" and, if so, the presiding officer's decision shall specify the utility's actions that caused the delay and shall include a proposed effective date for interim or final rates. (See Section III.E., *mimeo.* at 21.)

On the first criterion, substantial showing, Suburban's application supports its requested rate increases, which are substantially higher than the rate of inflation, in rate tables, workpapers, and sponsoring testimony. The proposed settlement between Suburban and DRA also proposes rate increases higher than the rate of inflation. The opposition to the proposed settlement and Suburban's requested rate increases does not justify denying the request for interim rate relief. That opposition will be addressed in the final decision in this proceeding, and the interim rate relief granted is subject to refund. Based on this record, we

¹ There also have been individual cases that have addressed requests for interim rate relief under Section 455.2. (See *In Re Cal-Am*, D.05-12-024 (December 15, 2005); *in Re Cal-Am*, D.05-02-007 (February 10, 2005).)

find that Suburban has made a substantial showing in its application for a rate increase that is at least equal to the rate of inflation.

On the second criterion, public interest, Suburban relies on prior Commission decisions, which have determined interim rate relief was reasonable to ensure that water utilities experiencing delays in their rate cases were not financially harmed. We will address this criterion after discussing the reason for delay in this proceeding.

Concerning the final criterion, reason for delay, Suburban delayed filing its GRC application and the proposed settlement due to DRA's exigencies. The settlement was opposed, and the resulting comment cycle meant the date for issuing the proposed decision was after the first day of the first test year of the GRC application. We find no action of Suburban resulted in the delay in completing the GRC proceeding.

Therefore, we find it in the public interest to grant Suburban interim rate relief. The delay in resolving this proceeding should not result in either the utility foregoing revenue necessary for just and reasonable rates or the ratepayers paying less (or more) than reasonable rates.

The interim increase shall be based on the rate of inflation as compared to existing rates (the rate of inflation to be calculated using the most recent Consumer Price Index maintained by the U.S. Department of Labor), shall be subject to refund, and shall be adjusted upward or downward, back to the effective date, consistent with the final rates adopted by the Commission in this proceeding.

IV. Assignment of Proceeding

John Bohn is the Assigned Commissioner and Janice Grau is the assigned ALJ in this proceeding.

V. Comments on Draft Decision

The request for interim rate relief was not formally opposed. However, Robinson's opposition to the settlement clearly opposed adoption of the proposed rate increase, although it did not discuss the motion for interim rate relief. Robinson also attempted to title the opposition motion to delay interim relief and for revision of proposed agreement between DRA and Suburban. The Docket Office limited the title to opposition to adoption of settlement agreement, which is what the pleading addressed. Although we could have found the request for interim rate relief was an uncontested matter pertaining solely to water companies under Section 311(g)(3) for which no public review and comment was required, we instead acknowledged there was opposition to any rate increase and permitted a reduced period for public comment and review. Opening comments were filed on _____, 2006, and reply comments were filed on _____, 2006.

Findings of Fact

1. Suburban is a water corporation with greater than 10,000 service connections.
2. Suburban's application proposes rate increases, which are substantially higher than the rate of inflation, and supports those increases in rate tables, workpapers, and sponsoring testimony. The proposed settlement between Suburban and DRA also proposes rate increases higher than the rate of inflation.
3. At the request of DRA, Suburban delayed filing its proposed and final applications under the RCP adopted in D.04-06-018. Suburban filed its GRC

application on August 22, 2005. Due to DRA's workload and staffing, the proposed settlement agreement was not filed until February 17, 2006.

4. Under the RCP adopted in D.04-06-018, a final Commission decision would be expected by June, 2006. Following the comment cycle concerning the proposed settlement agreement, a final decision is not required before August, 2006.

Conclusions of Law

1. Suburban is eligible to seek interim rate relief under Public Utilities Code Section 455.2 for its GRC application.

2. Suburban has made a substantial showing in its application for a rate increase that is at least equal to the rate of inflation.

3. It is in the public interest to grant Suburban interim rate relief effective July 1, 2006.

4. This decision should be effective immediately.

INTERIM ORDER

IT IS ORDERED that:

1. Suburban Water Systems (Suburban) shall file, by advice letter within 5 days, a tariff with the Commission implementing interim rates. The interim increase shall be based on the rate of inflation as compared to existing rates (the rate of inflation to be calculated using the most recent Consumer Price Index maintained by the U.S. Department of Labor), shall be subject to refund, and shall be adjusted upward or downward back to the interim rate effective date, consistent with the final rates adopted by the Commission in this proceeding.

2. Upon tariff approval, Suburban shall notify its customers in writing of the interim rate increase. The notice will reference this interim decision and

explicitly state that the interim rates are subject to refund and will be adjusted upward or downward back to the interim rate effective date, consistent with the final rates adopted by the Commission.

3. This proceeding remains open for resolution of the pending application.

This order is effective today.

Dated _____, at San Francisco, California.

INFORMATION REGARDING SERVICE

I have provided notification of filing to the electronic mail addresses on the attached service list.

Upon confirmation of this document's acceptance for filing, I will cause a copy of the filed document to be served upon the service list to this proceeding by U.S. mail. The service list I will use to serve the copy of the filed document is current as of today's date.

Dated June 5, 2006, at San Francisco, California.

/s/ TERESITA C.GALLARDO

Teresita C. Gallardo

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Last Update on 05-JUN-2006 by: LIL
A0508034 LIST

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